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IN THE

Supreme Court of the United States

October Term, 1960.

Nos. 804 and 805.

NAVIOS CORPORATION,
UNIVERSE TANKSHIPS, INC.

GLOBAL SEAMEN'S UNION,
Petitioners,

v.

NATIONAL MARITIME UNION OF AMERICA, SEAFARERS' INTERNATIONAL UNION OF NORTH AMERICA, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, LOCAL 1291, INTERNATIONAL MARITIME WORKERS' UNION, STEVE CARDULLO, JAMES T. MOOCK, RICHARD ASKEW, LOUIS PARISE and SHANNON J. WALL,
Respondents.

BRIEF IN OPPOSITION TO PETITIONS FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA.

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OPINIONS BELOW.

The opinion of the Supreme Court of Pennsylvania (p. 41, Appendix A of Universe Petition) is reported at 402 Pa. 325, 166 A. 2d 625 (1960). The opinion of the Court of Common Pleas No. 1 of Philadelphia County (p. 59, Appendix A of Universe Petition) is unreported.

JURISDICTION.

The jurisdictional requisites are adequately set forth in the petitions.

QUESTION PRESENTED.

Where an American shipowner-employer builds a vessel in Japan with American money and encumbers it with a mortgage to an American bank; registers the vessel in New York under the Liberian flag, conditioned upon "effective American control", in the name of a Liberian corporation which is wholly owned and operated by Americans; enters into a seven-year time charter expressly governed by American law with another Liberian corporation, which is also wholly owned by an American corporation, for the transport of iron ore from Venezuela to the latter corporation's steel plant in Pennsylvania; enters into a labor agreement with a newly formed labor union under Cayman Island law, and flies a Cayman Island crew to the United States for engagement in an American port; and the vessel thereafter makes regular runs between Venezuela and Philadelphia for four years: when American labor unions picketed the vessel protesting "unfair labor practices", is not the controversy "arguably subject" to the Labor Management Relations Act within the meaning of this court's decision in *San Diego Building Trades Council v. Garmon*, 359 U. S. 236 (1959), giving the National Labor Relations Board exclusive jurisdiction and precluding any state court from enjoining the picketing?

STATUTES INVOLVED.

The statutory provisions involved are Sections 7 and 8 of the Labor Management Relations Act of 1947, as amended, 29 U. S. C. A. 141 et seq., the pertinent provisions of which are printed in Universe Appendix D, page 72, et seq.

STATEMENT OF THE CASE.

The S.S. "Ore Monarch" was built in 1956 in Kure City, Japan, and construction was financed by the Bank of America National Trust and Savings Association, of New York, which took a $12,000,000.00 mortgage as a lien upon the vessel (Ex. P-1). The vessel was registered in the City of New York on January 9, 1957, under the Liberian flag by a New York attorney acting as the representative of the Liberian Government in New York (R. 82a, 89a), in the name of Universe Tankships, Inc. Universe is a Liberian corporation which is wholly owned by Oceanic Tankships S.A, a Panamanian corporation, which in turn is entirely owned by two American citizens, W. W. Wagner and Richard K. Ludwig (R. 123a-125a). The registration under the Liberian flag was conditional, however, upon the vessel remaining under the "effective control" of the U. S. Government (R. 89a-93a).

Universe entered into a time charter with Navios Corporation, a Liberian corporation, which was wholly owned by Navigen Corporation, also a Liberian corporation, which in turn is completely owned by United States Steel Company (R. 153a). Section 29 of that charter provides that all disputes shall be settled in the Port of New York in accordance with the laws of the United States; Section 21 requires that all bills of lading or contracts of carriage shall be subject to the provisions of the United States Carriage of Goods by Sea Act; Section 22 relates to the general average and insurance provisions and required that all adjustments be settled in the United States according to United States laws and that all disbursements shall be made in United States currency; Article 4 states that the charterer shall pay for the use of the vessel in United States money and that upon conclusion of the agreement the vessel shall be returned to a United States port. Stowage of the cargo must also be in accordance with the rules and regulations of the United States Coast Guard.

Universe entered into a labor agreement with Global Seamen's Union, which was newly created on June 1, 1959, under the Trade Union Law of 1942 of the Cayman Islands, British West Indies. It is the first and only union ever registered in that country (R. 220a). That union was created after American unions had conducted a protest picketing campaign for four days in order to publicize the activities of American vessels flying foreign flags, which have come to be known variously as "runaway ships", "flags of convenience", and "flags of necessity" (R. 493a, 503a).

The crew of the "Ore Monarch" was recruited in the Cayman Islands and flown to the United States where they signed the shipping contract and entered the service of the vessel. When replacements were needed, they were likewise recruited in the Cayman Islands and transported to the United States, where they were required to sign the shipping articles. Universe hired only alien seamen in American waters, except for three licensed American officers who were needed because of their knowledge of certain machinery (R. 503a, 492a). The shipping articles (Ex. P-3) disclose that almost the entire crew were signed on in Philadelphia and Morrisville, Pennsylvania, including replacements. The shipping articles required the crew to join Global Seamen's Union within thirty days after engagement.

On January 5, 1960, the Secretary of Universe sent a letter to the captain of the "Ore Monarch", cautioning the crew not to join any American union, and to abide by the contract between Global and Universe. The captain was instructed to read the letter to the unlicensed crew outside the territorial waters of the United States, which he did (Universe Appendix A, pp. 35,36).

The "Ore Monarch" from its inception engaged in regular runs transporting iron ore from Venezuela to the Fairless Steel Plant of the U. S. Steel Corporation in Morrisville, Pennsylvania.

On October 21, 1960, the vessel arrived at Philadelphia, laden with a cargo of iron ore, and berthed at Pier 122

South on the Delaware River for a partial unloading. Immediately thereafter two representatives of the International Maritime Workers Union [1] began to picket the vessel carrying signs which stated, "American maritime union protests substandard wages and working conditions on the Ore Monarch" and "American maritime union protests unfair labor practices of owner of S.S. Ore Monarch" (R. 494a-495a). See *Afran Transportation Co. v. N.M.U.*, 169 F. Supp. 416. The picketing was peaceful and unaccompanied by any violence whatsoever (Universe Appendix A, p. 36).

Petitioners instituted these actions by complaints in the Court of Common Pleas No. 1 of Philadelphia County, seeking injunctive relief for damages. After full hearing, the trial court denied the application for injunction and dismissed the complaints upon the ground that the matters in controversy were within the exclusive jurisdiction of the National Labor Relations Board. Petitioners appealed to the Supreme Court of Pennsylvania, which court affirmed the lower court's finding upon the same ground.

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1. The International Maritime Workers Union (IMWU) was sponsored by the two largest American unions for unlicensed personnel, the National Maritime Union and the Seafarers' International Union (R. 321a-322a).

ARGUMENT.

The sole issue raised by the facts in this case falls clearly within the rule pronounced by this court in *San Diego Building Trades Council v. Garmon*, 359 U. S. 236 (1959), with which the opinion of the court below is in full conformity.

In order to frame an issue which might impel this court to grant certiorari, it is argued that petitioners are truly foreign corporations who are operating the vessels in foreign trade and that the vessel is only transiently and temporarily in the United States. With head in the sand, petitioners ignore all of the American contacts and American interests involved in the vessel and blandly brush aside the American ownership of the vessel as unimportant. They ignore completely the fact findings of the court below regarding the American contact and the great body of law which specifically relates to those situations where such American contact is involved. In view of the undisputed facts in this record and the fact findings of the court below, this court need not reach the questions which would only properly be posed if there were no American interests and no American contact involved in the vessel and if the owners of the vessel were truly foreign. It would appear that the petitioners' very approach to the issues is a recognition that under the undisputed facts in this case there is no issue which would compel this court to grant certiorari.

The court below relied upon this court's decision in *San Diego Building Trades Council v. Garmon*, 359 U. S. 236 (1959), where it was held:

> "When an activity is arguably subject to Section 7 or Section 8 of the Act, the states as well as the federal courts must defer to the exclusive competence of the National Labor Relations Board if the danger of state interference with national policy is to be averted."

The issue raised by the instant petitions, therefore, is whether or not the union activity complained of is "arguably subject" to Section 7 or Section 8 of the Act.

A brief review of the background from which this controversy arose may be helpful in highlighting the real issue.

It is an economic fact of life that standards maintained aboard runaway ships undermine job opportunities of American seamen aboard what are in actuality American owned vessels. The continued transfer to foreign flags cannot help but depress the standards in the industry as a whole, and especially those of American seamen. The grave concern of American unions over the problem of runaway ships is shared by the International Labor Organization (I. L. O.), whose membership includes the unions of the great maritime nations of the world. At the I. L. O. Maritime Conference in Geneva, in 1956, a resolution was adopted condemning runaway shipping. Flags of Convenience, 14 Norwegian Shipping News 514 (1958). The threat to American Maritime Unions is further manifested by the fact that as of June 30, 1958, the active Merchant Marine Fleet of the United States of ships of 1,000 gross tons or more has decreased from over 2,000 vessels to 1,047, while that of Liberia has increased to 965 vessels and that of Panama has increased to 563. Britannica Book of the Year, 1959 (Events of 1958), at pages 426-7. The reduction in employment on American flag ships from 158,860 in 1951 to 84,300 in 1955 to 51,640 in 1958 and the current unemployment of some 40,500 American seamen is sufficient proof of the tremendous prejudicial impact upon American maritime labor. See U. S. Bureau of Census, Dept. of Commerce, Statistical Abstract of U. S., page 596 (1959); Hearings on Vessel Transfer, Trade-in and Reserve Fleet Policies Before the Subcommittee on Merchant Marine of the House Committee on Merchant Marine and Fisheries, 85th Cong., 1st Sess., part 715 (1957). This threat to the standards of the American maritime industry was clearly rec-

ognized in the hearings before the House Committee on Merchant Marine and Fisheries, *supra*, where, after receiving much testimony on this subject, Congressman Zelenko issued a statement expressly attacking the abuses connected with the runaway shipping trade. See pages 211-212 of the Report.

It is these factors which make it clear beyond dispute that the subject matter of this litigation is domestic in nature and involves job opportunities of American seamen. As was stated by Judge Bryan in *Afran Transportation Company v. N. M. U.*, 169 F. Supp. 416, at 422-423 (a case which was cited with apparent approval by this court in *Marine Cooks and Stewards v. Panama S.S. Co.*, 4 L. Ed. 2d 797 (1960)):

> "There can be no doubt that on the showing thus far made before me the defendants have a vital interest in the wages and conditions of employment of the crews of the vessels of these plaintiffs. The defendant Unions, as representatives of the bulk of the unlicensed seamen employed on American flag vessels, assert that the continuing transfer of American vessels to foreign flags, where wages and working conditions are below the standards on American vessels, will inevitably tend to depress the standards on American vessels which they have established by collective bargaining for their own members.
>
> "They also seek to discharge further transfer of vessels to foreign flags, and particularly these foreign flags, to deter what they claim to be shrinkage of job opportunities available to their members because of such transfers.
>
> "The defendant Unions assert that if they can succeed by peaceful picketing and protest, and by arousing public opinion, in raising the standards aboard foreign flag vessels, these depressive effects may be avoided.

"It cannot be said that these objectives bear no reasonable relation to the wages, hours and working conditions of those whom these Unions represent. Whether or not the Unions are correct in their premise that the raising of standards of Liberian and Panamanian vessels, and the discouragement of continued transfer to foreign flags, will in fact have the effect they claim is of no moment here."

Especially significant is the holding of the Court of Appeals for the Second Circuit in the case of *Bartholomew v. Universe Tankships, Inc.*, 263 F. 2d 487 (2 Cir., 1959), where that court reached the same conclusion as the Supreme Court of Pennsylvania in the instant case. In the *Bartholomew* case Universe attempted to hide behind its foreign registry and flag. The Circuit Court, refusing to be baffled by this furtive attempt at international legerdemain, stated at page 442:

"Although appellant contends otherwise, the practice in this type of case of looking through the façade of foreign registration and incorporation to the American ownership behind it is now well established. Gerradin v. United Fruit Co., 2 Cir., 1932, 60 F. 2d 927, certiorari denied, 287 U. S. 642, 53 S. Ct. 92, 77 L. Ed. 556; Carroll v. United States, 2 Cir., 1943, 133 F. 2d 690; Zielinski v. Empresa Hondurena de Vapores, D. C. S. D. N. Y., 1953, 113 F. Supp. 93; Torgensen v. Hutton, 2nd Dept. 1934, 234 App. Div. 31, 276 N. Y. S. 348, affirmed, 1935, 267 N. Y. 535, 196 N. E. 566, certiorari denied, 1935, 296 U. S. 602, 56 S. Ct. 118, 80 L. Ed. 426. This is essential unless the purposes of the Jones Act are to be frustrated by American shipowners intent upon evading their obligations under the law by the simple expedient of incorporating in a foreign country and registering their vessels under a foreign flag. See Lauritzen, 345 U. S. at page 587, 73 S. Ct. at page 930. In this case now before us appellant has taken the

trouble to insert an additional nominal foreign corporation between the flag and the true beneficial ownership of the vessel. But we have little difficulty in brushing all this aside when considering the applicability *vel non* of the Jones Act. *Complicating the mechanics of evasive schemes cannot serve to make them more effective. What we now do is not to disregard the corporate entity to impose liability on the stockholders, but rather to consider a foreign corporation as if it were an American corporation pursuant to the liberal policies of a regulatory act.*" (Emphasis added.)

The case of *Lauritzen v. Larson*, 345 U. S. 571, upon which the court relied in the *Bartholomew* case is referred to by petitioners, who extract from that opinion an excerpt unfortunately taken out of context. Petitioners make reference to that part of the court's decision in *Lauritzen* which holds that a foreign shipowner and foreign vessel temporarily in American waters is not governed by the Jones Act, but petitioners failed to note the qualification this court made crystal clear at page 587 of the opinion:

> "But it is common knowledge that in recent years a practice has grown, particularly among American shipowners, to avoid stringent shipping laws by seeking foreign registration eagerly offered by some countries. Confronted with such operations, our courts on occasion have pressed beyond the formalities of more or less nominal foreign registration to enforce against American shipowners the obligations which our law places upon them."

In *Bobolakis v. Compania Panamena Maritima San Gerassimo*, 168 F. Supp. 236, Judge Kaufman appropriately stated at page 238:

> "In light of the clear language in Lauritzen and of other cases dealing with foreign ownership, I have grave doubt that it can any longer be seriously contended that the courts will not take jurisdiction of a

Jones Act where the plaintiff is an alien and this country's sole significant contact with the case is American ownership of the vessel itself. See Carroll v. United States, 2 Cir., 1943, 133 F. 2d 690, 693; Gilmore & Black, Admiralty 388 (1957).

"But Compania argues that in this case the ship's corporate owner (Compania Panamena Maritima San Gerassimo, S. A.), and not the vessel itself, is owned and controlled by Americans. The moving defendant urges me to hold the rationale of Lauritzen does not cover this case. Under the view pressed by Compania, an American owner might escape his statutory liability merely by interposing a foreign corporation between himself and the vessel, both of which, for all practical purposes he owns. *I do not believe that the law can be so easily baffled.*" (Emphasis added.)

See also *Southern Cross Steamship Co. v. Firipis*, 285 F. 2d 651 (4 Cir., 1960), where a Greek seaman employed on a Honduran vessel owned by a Liberian corporation, subject to "effective American control" was permitted to recover under the Jones Act for personal injuries and also for double wages under R. S. 4529, 46 U. S. C. 596, for failure to pay wages within the time required by American law. Certiorari was denied by this court on April 4, 1961 (29 U. S. Law Week, 3290).

Petitioners' reliance upon the case of *Benz v. Compania Naviera Hidalgo, S. A.*, 353 U. S. 135, is a "horse soon curried." That case, which incidentally preceded the decision in *Garmon*, held that the National Labor Relations Board did not have exclusive jurisdiction over an action which involved a wage dispute arising aboard a foreign ship between foreign seamen and foreign owners. There was no record of American ownership in the *Benz* case (see record in *Benz v. Compania, etc.* at page 46). The court made it perfectly clear that the dispute in *Benz* was solely between a foreign ship and its foreign crew, and sig-

nificantly declared that "*the only American connection was that the controversy erupted while the ship was transiently in a United States port.*" (Emphasis added.) This court left the clear inference that it would have reached a different conclusion if there were a substantial "American connection."

Unlike the factual situation presented here, the owners of the steamer in the *Benz* case were not Americans, but a bona fide foreign corporation, owned entirely by foreign stockholders. The ship did not receive the major part of its business from American nations, nor did it visit American ports regularly, as did the "Ore Monarch." Rather, the sole American contact in *Benz* was the ship's temporary stop in an American port for the limited purpose of making repairs, taking on a cargo and completing an insurance survey. After the initial contact with the American port, the steamer in *Benz* left United States territorial waters and had no charter commitment to return. Parenthetically, the "Ore Monarch" is on a run between Venezuela and the Philadelphia area.

Again, unlike the instant case in which the union activity was designed for the presevation, among other things, of American seamen's wages, working standards and job opportunities, in *Benz* the unions were interested primarily in the internal economy of the ship and picketed out of sympathy with the strike of foreign seamen against foreign owners, not only in flag but in fact. There can be no question that the preexisting shipboard dispute was crucial to the opinion of the Supreme Court in the *Benz* case. It is interesting to note that since the crew aboard the foreign vessel in *Benz* asked the union to represent them in the controversy with the employers, the union there was not acting primarily as an American union but rather as a spokesman of the foreign crew, 353 U. S. at 140, and, accordingly, the entire complex of facts constituted a shipowner-crew dispute arising out of the internal order of the vessel. Certainly, *Benz* is inapposite authority in a flag of convenience

picketing case which does not have a similar link with internal shipboard relations.

The compass of the *Benz* holding was recently outlined succinctly by this court in *Marine Cooks and Stewards v. Panama Steamship Company*, 362 U. S. 365, where it was stated (p. 369):

> "The question in the Benz case was whether the Labor Management Relations Act of 1947 governed the internal labor relations of a foreign ship and its foreign workers under contracts made abroad while that ship happened temporarily to be in American waters. The Benz case decided that the Labor Management Relations Act had no scope or coverage and that it accordingly did not preempt the labor relations field so as to bar an action for damages for unlawful picketing under Oregon law."

While this court in *Marine Cooks* bottomed its dismissal of the petition for injunction on the limitation imposed by the Norris-La Guardia Act, it, in intriguing dictum, gave further support to the limited nature of the applicability of the *Benz* situation, where in footnote 12, it said:

> "Unlike the situation in the Benz case, in which American unions to which the foreign seamen did not belong picketed the foreign ship in sympathy with the strike of the foreign seamen aboard, the union members here were not interested in the internal economy of the ship, but rather were interested in preserving job opportunities for themselves in this country. They were picketing on their own behalf, not on behalf of the foreign employees as in Benz. Though the employer here was foreign, the dispute was domestic. For a thoughtful discussion of the impact of foreign employment upon American labor standards, see Afran Transport Co. v. National Maritime Union, 169 F. Supp. 416, 1959 Am. Mar. Cas. 326 (holding that the Norris-LaGuardia Act withdrew from the Federal Dis-

trict Courts jurisdiction to issue labor injunctions in a labor dispute strikingly like the one involved here). See Fianza Cia. Nav. S. A. v. Benz., 1959 Am. Mar. Cas. 1758, 37 CCH Lab. Cas. Par. 65, 495."

Therefore, the *Benz* case presented a factual situation in which there was no substantial American contact with the vessel and the picketing was in support of an actual strike between the foreign seamen and the foreign owners and was, therefore, an intrusion into a foreign family squabble. It was not, as in the case at bar, protest picketing by American unions against the American owners, which picketing was designed for the preservation of job opportunities for American seamen in this country. The seamen in the case at bar were picketing on their own behalf, and not as in *Benz* in support of a foreign strike against a foreign shipowner. See *Marine Cooks and Stewards, supra*, footnote 12.

The most recent decision of the National Labor Relations Board in *West India Fruit and Steamship Company, Inc.—Seafarers' International Union of North America*, 130 NLRB 46 (2/46/61), a case squarely on point, brings into sharp focus the fatal defects in petitioners' arguments. In that case the vessel "Sea Level" was registered under the Liberian flag and manned by an alien crew under Liberian shipping articles. It operated in "foreign commerce" between Cuba and a port in the United States. The employer contended there, as here, that the National Labor Relations Board did not have "legal jurisdiction" over its "international seaborne operations". The Board, however, after a comprehensive and scholarly review of all of the applicable legal facets, concluded that it was dealing with "essentially American commerce and the American shipowner". The Board, in reviewing the scope of "commerce" under the Act, pointed out that it expressly extended to "trade . . . between any foreign country and any state (29 U. S. C. A. 152(6)). The Board recognized the "attendant circumstances" as a crucial issue in the determina-

tion of its own jurisdiction. It rejected first the shipowner's contention that seagoing operations constituted an unwarranted extraterritorial extension, quoting from this court's opinion in *Consolidated Edison v. NLRB*, 305 U. S. 197, "It is the effect upon interstate or foreign commerce, not the source of the injury which is the criterion. . . ." In considering the "foreign aspects" of the case, the Board noted that nationality of a vessel or residence or citizenship of a crew are immaterial factors in determining jurisdiction. As to the foreign registry of the vessel, relying upon this court's opinion in *Lauritzen v. Larson*, 345 U. S. 571, involving an application of the Jones Act to a foreign flag vessel, reasoned that "in determining whether or not a domestic statute applies in a situation such as we have here the answer is found by 'ascertaining and valuing points of contact between the transaction and the governments whose competing laws are involved' and by 'weighing . . . the significance of one or more connecting factors between the shipping transaction regulated and the national interest served by the assertion of authority'." Another crucial factor was whether the United States "contacts" in the operation were "substantial—that is more than minimal but not necessarily preponderant." The Board concluded that they were, and that "where the Labor Act is involved 'foreign commerce of the United States' is both an important and necessary contact within the intent of Lauritzen." On the authority of this court's decision in *Lauritzen*, the Board rejected the contention that "flag law governs all". As to the contention that the internal economy of a ship "is subject exclusively to the law of the nationality of a ship's registry," the Board first noted that this doctrine was "but part of the broader flag rule," and irrespective of *Lauritzen*, "is applicable if the events involved affect only the internal economy or discipline of a vessel." Congress, however, has made an express legislative finding in Section 1 of the Labor Act that disputes to which the Act applies "have the intent or necessary effect of burdening or obstructing com-

merce" (29 U. S. C. A. 151). Concluding this point, the Board expressed "considerable doubts" that application of the Labor Act involved any interference with traditional "internal order and discipline of a vessel." In rejecting the relevance of the "internal order doctrine", and the "flag law" principle to applicability of the Act, the Board made it plain that it was neither challenging nor construing the Liberian registry, stating:

> "The issue is whether the Liberian nationality of the vessel, which we accept without question, divests the Board of that jurisdiction it would have but for the foreign nationality."

The Board also rejected the contention that the non-resident, foreign-national status of the crew divested it of jurisdiction, holding that the "Act does not differentiate between citizens and non-citizens", and "it would be anomalous at best to base jurisdiction upon citizenship and residence of the parties involved, rather than upon the relationship to the protected commerce of this nation." The decision of this court in *Benz* is most carefully analyzed. The Board points out this court's emphasis, *inter alia*, on the fact that in *Benz* the vessel was only "transiently" or "temporarily" in American waters, and the labor controversy involved had only a "chance", "fortuitous" or "happenstance" connection with American commerce, while the "Sea Level" (as the "Ore Monarch" here) was engaged in substantial American commerce; that *Benz* was limited to a bona fide foreign vessel, foreign employer, foreign crew, foreign agreement with "no American connections" except that the vessel was "temporarily" in American waters; that in the "Sea Level" (as in the "Ore Monarch") the controversy was between "an American employer and an American union . . . engaged in American foreign commerce. . . ." ". . . Though *Benz* holds at least that the Labor Act does not extend to a foreign flag

vessel, its foreign flag owner and foreign crew absent substantial American commerce, we find no support for the conclusion urged on us in this proceeding that *Benz* also holds that the presence of those foreign factors alone bars the Act, even when the undertaking is, as here, essentially an American enterprise operating almost exclusively, if not wholly, in American commerce as that term is defined in Section 2(6) of the Act." The Board also rejected the contentions of the Defense, Justice and State Departments that the application of the Act to "flags of convenience" would be detrimental to our defense policies because it might force ship operators to transfer to European flags where their vessels would be less amenable to requisition by the United States. The Board's short answer was that if a vessel's American contacts warranted application of the Labor Act, its operator would find no sanctuary in European registry. Finally, the Board pointed out that in the enactment of the Landrum-Griffin Act, Congress reviewed and amended the Labor Act with respect to the Board's assertion of jurisdiction, providing *inter alia:*

> ". . . the Board shall not decline to assert jurisdiction over any labor dispute over which it would assert jurisdiction under the standards prevailing upon August 1, 1959." (Labor Management Reporting and Disclosure Act of 1959, Sec. 701(a), 29 U. S. C. A. Sec. 169(c)(i).)

Since prior to August 1, 1959, the Board had taken jurisdiction over foreign flag vessels, Congress clearly did not, although it might have, restricted the Board's action in this regard.

CONCLUSION.

The issue as posed by petitioners ignores the substantial American contacts present in this case, and assumes a bona fide foreign owner, foreign vessel, foreign crew and a foreign dispute with the vessel only "transiently" in American waters. The true issue involved in this case must necessarily rest upon the fact findings based on the undisputed evidence from which the conclusion is inescapable that the "Ore Monarch" has the most substantial American contacts, under which circumstances the controversy falls clearly within the exclusive jurisdiction of the National Labor Relations Board. On this point, the decision of the court below is in full conformity with this court's decisions in *Carmon, Lauritzen* and *Benz.*

The petitions for writ of certiorari should be denied.

Respectfully submitted,

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